

HOUSE BILL REPORT

EHB 1927

As Passed House:

March 18, 2003

Title: An act relating to the mandatory mediation and mandatory arbitration of health care claims.

Brief Description: Concerning mandatory mediation of health care claims.

Sponsors: By Representatives Lantz, Schual-Berke, Clibborn, Campbell, Moeller, Cody, Morrell, Rockefeller, Kirby, Lovick, Kenney, Linville, Veloria, Conway, Simpson, Sommers and Haigh.

Brief History:

Committee Activity:

Judiciary: 2/21/03, 2/27/03 [DP].

Floor Activity:

Passed House: 3/18/03, 97-0.

Brief Summary of Engrossed Bill

- Requires 90 days notice to a defendant before a medical malpractice action may be commenced.
- Provides that all medical malpractice claims are subject to mandatory mediation without exception.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 6 members: Representatives Lantz, Chair; Moeller, Vice Chair; Campbell, Flannigan, Kirby and Lovick.

Minority Report: Do not pass. Signed by 3 members: Representatives Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; and Newhouse.

Staff: Edie Adams (786-7180).

Background:

Medical malpractice actions are civil tort actions for the recovery of damages for injury or death resulting from the provision of health care. There are three grounds on which a health care provider may be found liable in a medical malpractice action:

- The health care provider failed to follow the standard of care;
- The health care provider promised that the injury suffered would not occur; or
- The injury resulted from health care to which the patient did not consent.

The statute of limitations for medical malpractice actions has varying time periods depending on the circumstances, but the general rule is that an action must be brought within three years of the alleged act or omission or within one year of discovery that the injury was caused by the alleged act or omission. There is no requirement that a plaintiff provide a defendant with prior notice of his or her intent to institute a suit.

Medical malpractice claims are subject to mandatory mediation in accordance with court rules adopted by the Supreme Court. The court rule provides deadlines for commencing mediation proceedings, the process for appointing a mediator, and the procedure for conducting mediation proceedings. The rule allows mandatory mediation to be waived upon petition of any party that mediation is not appropriate.

Summary of Engrossed Bill:

Medical malpractice actions are subject to a requirement of 90 days prior notice to the defendant of the intent to file suit and a requirement, without exception, that the parties participate in mandatory mediation.

A medical malpractice action may not be commenced unless the plaintiff has provided the defendant with 90 days prior notice of the intention to file a suit. The 90-day notice requirement does not apply if the defendant's name is unknown at the time of filing the complaint. If the notice is served within 90 days of the expiration of the statute of limitations, the time for commencing the action must be extended for 90 days from the date of service of the notice.

The Supreme Court rule implementing mandatory mediation for health care actions may not provide any exceptions to the mandatory mediation requirement.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: There are some good pieces to this bill. It is a good idea to require pre-suit notice to allow parties to evaluate the claim. Mandatory mediation and mandatory arbitration are beneficial in trying to and keep cases from going to trial. The expedited discovery process of mandatory arbitration cuts costs to the parties.

(With concerns) The 90-day notice requirement might not work the way it is expected. There are concerns with setting the mandatory arbitration requirement at \$250,000, which is very high.

Testimony Against: None.

Testified: (In support) Representative Lantz, prime sponsor; Loren Finley; and Carol Johnston and Larry Shannon, Washington State Trial Lawyers Association.

(With concerns) Lisa Thatcher, Washington State Hospital Association; Mike Glenn, Olympic Medical Center; James McMahon, Washington Casualty Company; and Cliff Webster, Washington State Medical Association.